

RESPONSE TO RESTRICTION REQUIREMENT

In response to the restriction requirement mailed February 10, 2003, Applicants hereby elect, with traverse, to prosecute Group IV (claims 26, 27, 31 and 35-41) to the extent that the claims are drawn to oil from Canola. This response is being filed with a request for a 2-month extension of time.

Applicants thank the Examiner for her helpful comments and suggestions made during the phone conference held on or about April 2, 2003 to discuss the Restriction Requirement in this application. Further to that phone conference, Applicants submit herewith an amended set of claims and respectfully request entry of the amendment. Finally, Applicants request reconsideration and withdrawal of the Restriction Requirement and rejoinder of Groups I through XVII such that the subject matter in these seventeen Groups is examined together.

Status of the Claims

Upon entry of the foregoing amendment, claims 26, 27, 31 and 35-41 will be pending. Applicants reserve the right to pursue unclaimed subject matter in related continuing or divisional applications.

***Request for Reconsideration of Restriction Requirement
and Rejoinder of Groups I - XVII***

Pending claims 26, 27, 31 and 35-41 have been amended to more clearly define the invention. Applicants respectfully request that the Restriction Requirement mailed February 10, 2003 be reconsidered and withdrawn. Specifically, Applicants request that Groups I – XVII be rejoined and examined together for the following reasons.

The pending claims have been required to be divided into seventeen different groups based primarily on the source from which the claimed oils are derived. The Office Action alleges that since the oils derived from the sources recited in the claims are distinct products, wherein the oils are derived from different plant species, these oils would be made separately each by extraction from a different plant species. The Office Action also alleges that the oils of Groups I – XVII are capable of being separately made and therefore restriction is proper.

Pending claims 26, 27, 31 and 35-41 have been amended to recite a specific unifying characteristic common to all of the claimed oils regardless of their source. This characteristic is that the hydroxylated fatty acid content of the oil is increased compared to the hydroxylated fatty acid content of oil obtained from seeds of the same plant without the recombinant DNA construct. All of the claims also require that the oil be isolated from the seeds of transgenic plants that comprise specific recombinant DNA constructs which are defined in the specification and claims.

Applicants respectfully submit that the recited unifying characteristics, as they appear in each of the pending claims, define the claimed genus of oils and distinguish it from other oils. Applicants further submit that the unifying characteristics recited in the claims obviate the need for a Restriction Requirement.

Applicants respectfully assert that no undue burden would be required to search and examine the claims as they are presently amended because the recited characteristics of the claimed oils unite them into a single genus that is patentably distinct from other oils. Further, the class/subclass designations, as listed in the Restriction Requirement, all fall within one major area, 426/601.

Applicants respectfully point out that the instant application is a member of a family of applications, some of which have issued as U.S. Patents. The claims in these applications recite a number of different plant species but none of the applications have been subjected to a Restriction Requirement dividing the claims along the lines of plant species. The applications and patents in this family include the following: 08/314,596 (now U.S. Pat. No. 5,668,292); 08/320,982 (now U.S. Pat. No. 5,801,026); 08/530,862 (now U.S. Pat. No. 6,291,742) and 08/819,037 (now U.S. Pat. No. 6,028,248).

Finally, Applicants respectfully assert that the Restriction Requirement asserted against the pending claims, if it were to be maintained, would impose an undue economic hardship on the licensee whose limited financial resources have provided the funding for prosecuting this family of applications. Applicants respectfully submit that the cost of pursuing claims to each one of the oils denoted in Groups I through XVII would be prohibitively expensive. The financial burden that would result from pursuing seventeen different applications to each of the

Groups set forth in the Restriction Requirement would in all likelihood be well beyond the means of the present licensee.

For these reasons, Applicants respectfully request that Groups I through XVII be rejoined and examined together.

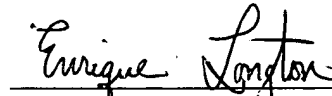
Should the Examiner find that a phone conference would be advantageous or helpful in advancing prosecution of the pending application, she is invited to contact the undersigned at her convenience.

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Date: May 12, 2003

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